STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 13, 2004
v	No. 246231 Wayne Circuit Court
TIMOTHY WILLIAM BEASLEY, Defendant-Appellant.	LC No. 02-002521-01

Before: Sawyer, P.J. and Gage and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his conviction, following a jury trial, of possession with intent to deliver less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv). The trial court sentenced defendant to one to twenty years' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The police conducted surveillance at a house in Detroit because of suspected drug activity. An officer observed what he believed to be drug transactions taking place at the house. Based on information of this suspected drug activity, officers secured a search warrant for the premises. After knocking and announcing their presence, the officers entered the premises. Several individuals, including defendant, were in the house and attempted to run out the back. The officers arrested all the individuals and secured the premises. During a search of the home officers found cocaine on the top of an entertainment center. The officers also confiscated three cell phones, two weapons, a scale, and money from all four individuals.

On appeal, defendant first argues that he was denied due process of the law because the trial court was biased and violated the separation-of-powers doctrine. After the prosecution ended its cross-examination of defendant, the trial court directed counsel to approach the bench. During this off-the-record exchange, the trial court inquired if the prosecutor was going to impeach defendant with respect to defendant's prior convictions. Following this exchange, the prosecution resumed its cross-examination and elicited that in 1991, defendant was convicted of a felony of false pretenses over $100 and of a felony of misrepresentation of the identification of a motor vehicle. After the jury began its deliberations, defense counsel objected to the trial court's conduct, and the following transpired:

> *Defense Counsel*: Your Honor, you had asked us to come up here at sidebar and speak regarding [cross-examination of defendant] . . . you had asked the

prosecution if they were going to and why they were not going to impeach Mr. Beasley with respect to his prior convictions. And that's actually a tactical call, I think, for the People only, for the prosecution . . . And I would object to having this Court exercise its authority to go and remind the prosecution of something they have missed. I think that it's setting up against my client at that particular point. And I think the court should not show favoritism, or in this instance, its inclination towards one side or the other . . . I just object to your reminding counsel as to something that she could have done.

The Court: Well what do you wish as a remedy?

Defense Counsel: Well I don't know if there is a remedy at this point your Honor. I mean the, I would hesitate to ask for a mistrial of course. I don't know if I'm really necessarily, necessarily grant one or would be afforded one at this particular stage. I haven't had this happen before your Honor so I'm a little off guard. And it's really not clear that it is, that if [the prosecutor] wanted to use it, of course it would come in at the 609. But my point is Judge, is it's just that, I just, once the jury has heard it, the skunk is out of the box so to speak and there's really no lesser or there's no curative question or statement you can make to them at this particular time. I just think that the Court should have refrained from it, from doing what it wanted to do.

The Court: Well I understand that and since I didn't, my question is what is the remedy?

Defense Counsel: To be honest Judge, I'm at a loss. I don't know.

* * *

[Prosecution]: Your Honor, I don't think it was out of line. It was simply an oversight on my part. And we ask that you let the jury continue deliberating.

The Court: Well I assumed when I called you to the bench that the prosecutor had simply forgotten to impeach him. She was certainly still free not to impeach him using the two prior felony convictions that involve theft, or dishonesty and were within the ten years. There was another felony conviction from 1984 that she didn't use nor would I have allowed her to use. Since, it appeared to me that she forgot, I reminded her. I certainly didn't require her to impeach the defendant using the prior convictions. And certainly the jury heard nothing of what I said nor could, it seems to me, that [sic] possibly had concluded that I was or was not favoring the prosecution in their presentation of the case. Indeed I instructed them in my closing instructions that if they thought I had an opinion about how they should decide the case, they should disregard that opinion for they are the sole judges of the facts of the case. And since there has been no remedy requested, I guess we'll let it stand for the review of an appellate court.

"A defendant in a criminal trial is entitled to expect a 'neutral and detached magistrate.'" *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996), quoting *People v Moore*, 161 Mich App 615, 619; 411 NW2d 797 (1987). However, a trial court has a duty to see to the "effective ascertainment of the truth" at trial. MCL 768.29. Thus, the court, on its own, may question witnesses to elicit additional relevant information. *Cheeks*, *supra* at 480, citing *People v Conyers*, 194 Mich App 395, 404-405; 487 NW2d 787 (1992).

Here, the court did not direct the prosecution on how to argue its case. Instead, the court, without the jury hearing, suggested the issue of impeachment to the prosecution. See, e.g. *People v Shields*, 200 Mich App 554, 561; 504 NW2d 711 (1993). The court did not exhibit bias against defendant, but instead, was within its truth-finding discretion. In addition, the court instructed the jury that it had no opinion about the case and that the jury should disregard any perceived opinion, and the jury is presumed to follow the court's instruction. While defense counsel took issue with the court's conduct, counsel asked for no specific remedy. We find no error with the court's conduct that requires reversal.

Defendant next argues on appeal that he was denied the effective assistance of counsel. According to defendant, before trial, defense counsel moved in limine to exclude any police testimony concerning the weapons found in the house where defendant was arrested and the trial court granted the motion. Based on this, defendant contends that defense counsel was ineffective for failing to object when the prosecution introduced evidence of these weapons at trial.

Defendant's argument is without merit. Counsel is mistaken with regard to what took place before the trial court. Contrary to defendant's assertion, a review of the record shows that defendant's motion in limine was *denied*. Before jury selection began, defense counsel requested a stipulation concerning the fingerprint testing conducted on the two guns that were retrieved from the house. The trial court inquired as to the relevancy of the guns considering that there were no weapons charges brought against defendant. It was then explained that a previous judge in the case had denied the motion in limine to exclude evidence of the weapons. While the trial court initially expressed doubts about the relevancy of the guns, the court later determined that it was bound by the previous judge's ruling. Accordingly, defense counsel was not ineffective for failing to challenge evidence that was already deemed admissible.

Finally, defendant argues on appeal that the trial court erred in allowing an officer, who was not qualified as an expert, to testify concerning the fingerprint testing conducted on the guns found in the house. At trial, an officer testified that the weapons had been tested for fingerprints, but the results were negative, which meant that "when they did the laser or super fuming, they couldn't retrieve any traces of fingerprints on it or the fingerprints were damaged." The officer then testified that negative means "ten percent of the time it's unreadable. Ninety percent of the time, it's usually not there." When the prosecutor asked "[n]egative doesn't mean that no, it's not such and such a person," the officer responded "no." Defendant now contends that in effect, the officer improperly testified that expert analysis failed to disclose defendant's fingerprints on the weapons, but that did not mean that defendant had not handled them.

We find that regardless whether the officer's testimony was admissible, any error with regard to the admission of the evidence was harmless. Irrespective of the officer's testimony

concerning the fingerprint testing, the jury was aware that weapons were located in the house where the drugs were found.[1] Defendant was charged with and convicted of possession with intent to deliver. Officers conducted surveillance of the house in question and observed narcotics activity. One officer identified defendant as one of the sellers who answered the door to a suspected buyer. When officers executed the search warrant, defendant was in the house with three other people. Officers found cocaine in the home and other items evidencing drug activity, including a scale with what the officers believed to be a residue formed from the cooking of wet cocaine. There is no evidence that the testimony concerning the fingerprint testing of the weapons affected the outcome of this case. *People v Lukity*, 460 Mich 484, 493-494; 596 NW2d 607 (1999). Accordingly, any error was harmless. *People v Whittaker*, 465 Mich 422, 427; 635 NW2d 687 (2001).

Affirmed.

/s/ David H Sawyer
/s/ Hilda R. Gage
/s/ Donald S. Owens

[1] We reiterate that defendant erroneously stated that the trial court granted his motion to suppress evidence of the weapons, but the record shows that the court actually *denied* the motion. Thus, evidence of the weapons was admitted, and defendant sought a stipulation that the fingerprint testing was negative.